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In re Application of:
RUSSELL, JAMES KNOX et al. : 12/19/08
Serial No. 10/597,079 :
Filed: Jul. 11, 2006 :
Docket: PHUS040020US2. : DECISION ON PETITION
Title: ADAPTIVE PHYSIOLOGICAL : UNDER 37 CFR § 1.181
MONITORING SYSTEM AND
METHODS OF USING THE SAME

This is a decision on the petitions filed Dec. 18, 2008 under 37 CFR 1.181 requesting supervisory review of the advisory action mailed Nov. 5, 2008. In the petition, petitioner requests entry of the amendment after final filed on Oct. 17, 2008 under 37 CFR 1.116. The petition is being considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

The examiner was requested to enter the amendment after final filed on Oct. 17, 2008 for appeal purposes because the amendment neither raised new issues nor added new claims. Additionally, some claims were canceled to reduce the issues of appeal. A review of the final rejection shows that claims 1-4, 6, 8-12, 15, 17, 24-30 and 34 were rejected under 35 USC 102(b) as anticipated by Nolan et al. (US Pat. 5,404,877) and Claims 5, 7, 13 and 15 were rejected under 35 USC 103 as unpatentable over Nolan et al., et al. (US Pat. 5,404,877) in view of Toda (U.S. Pat. Publication 20020036446). In the present amendment under 37 CFR 1.116, the applicant merely re-writes claims 9, 25, and 27 in independent form without any changes of scope and cancels claims 1-8, 14, 16, 18-22, 24 and 26 without adding any new claims to reduce the appealable issues. Therefore, there is no reason not to enter the amendment after final for appeal purposes. Claims 9-12, 15, 17, 25, 27-30 and 34 remain rejected under 35 USC 102(b) as anticipated by Noland et al. (US Pat. 5,404,877) and claims 13 and 15 remain rejected Nolan et al., et al. (US Pat. 5,404,877) in view of Toda (U.S. Pat. Publication 20020036446).

In finding petitioner's points of argument persuasive, the requested relief is granted. The amendment after final filed on Oct. 17, 2008 will be entered for appeal purposes. The period to file an appeal brief remains unchanged.

Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED.


Donald T. Hajec, Director
Technology Center 3700